

After recording, return to:

**Don Meyer
Foss Waterway Redevelopment Authority
535 E. Dock Street, Suite 204
Tacoma, WA 98402**

Legal Description

BLOCK 59-PARCEL "D": Lots 1 through 7, and the North 30 feet of Lot 8, of Block 59, according to the Map of Tacoma Tide Lands, as filed in the Office of the Commissioner of Public Lands at Olympia, Washington 3 September 1895; less the east 120 feet measured parallel to the east line of said Plat.

APPENDIX C

RESTRICTIVE COVENANT

(FOR FOSS WATERWAY DEVELOPMENT AUTHORITY'S PORTION OF PARCEL 3)

The property that is the subject of this Restrictive Covenant is the subject of remedial action under Chapter 70.105D RCW. The work that will be done to clean up the property (hereafter the "Cleanup Action") is described in the Consent Decree entered in *State of Washington Department of Ecology v. City of Tacoma and Metropolitan Park District of Tacoma*, Pierce County Superior Court Cause No. 94-2-10917-6, in attachments to and documents referenced in the Decree, and in the Fourth Amendment to the Decree entered by the Pierce County Superior Court on November 17, 2000, (collectively referred to as "Decree"). This Restrictive Covenant is required by the Department of Ecology ("Ecology") under Ecology's rule WAC 173-340-440 (1991 ed.) because the Cleanup Action on the property will result in a conditional point of compliance and in residual concentrations of carcinogenic polycyclic aromatic hydrocarbons ("PAHs"), lead, and total petroleum hydrocarbons (TPH) in soil which exceed Ecology's Method A and Method B cleanup levels for soils established under WAC 173-340-740(2) and (3); and because the Cleanup Action does not constitute a final resolution of groundwater contamination issues.

The undersigned, the Foss Waterway Development Authority (“FWDA”) holds legal title to certain real property in the County of Pierce, State of Washington, denominated in the Decree as a portion of the Parcel 3 and 15th Street Right-of-Way site (hereafter “the property”). The legal description of the property is attached and made a part hereof by reference. The property is a portion of the Site being cleaned up under the above-referenced Decree and Amendment. The property has been shown to contain elevated levels of TPH and carcinogenic PAHs and lead in soils as documented through sampling performed by the City of Tacoma.

The FWDA, as holder of legal title, does hereby declare that it has authority to enter into this Restrictive Covenant. The FWDA makes the following declaration as to limitations, restrictions and uses to which the property may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the property.

Section 1. No groundwater may be taken for domestic, agricultural, commercial, or industrial purposes from any well at the property.

Section 2. Any activity on the property that may interfere with the Cleanup Action, operation and maintenance of the Cleanup Action, or monitoring of the Cleanup Action is prohibited without the prior written approval of Ecology, except as provided in Section 9. Except as provided in Section 9, any activity on the property that may result in the release of a hazardous substance that was contained as part of the Cleanup Action is prohibited without the prior written approval of Ecology, including, but not limited to, any activity that could disturb the integrity of a cap system constructed as part of the cleanup action.

Section 3. The integrity of monitoring wells placed on the property for the purpose of groundwater monitoring shall be maintained by the FWDA or its successor in interest or assigns for a minimum of three years from the date the monitoring wells are constructed and commence operation, or for a longer period of time if required by Ecology. In the event future construction activities on the property require abandonment or removal of monitoring wells on the Property, such removal or abandonment shall not occur without the prior written approval of Ecology. If groundwater monitoring wells are constructed on the Property but later need to be replaced, the monitoring wells shall be replaced in a manner approved by Ecology.

Section 4. The FWDA and all successors in interest and assigns must give written notice to Ecology, or to a successor agency, of the owner’s intent to convey any interest in the property other than the sale or resale of individual condominium units within the improvements constructed on the property. No conveyance of title, easement, lease, or other interest in the property shall be consummated by the FWDA or a successor in interest or assign without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action as required by the Decree, its attachments and amendments, including any subsequent amendments thereto which are recorded with the Pierce County Auditor’s Office, and for continued compliance with all required institutional controls.

Section 5. The FWDA and all successors in interest and assigns must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The FWDA and all successors in interest and assigns must notify and obtain approval from Ecology, or its successor agency, prior to any use of the property that is inconsistent with the terms of this Restrictive Covenant, or the Decree, its attachments and amendments, including any subsequent amendments thereto which are recorded with the Pierce County Auditor's Office. Ecology or its successor agency may approve any inconsistent use only after public notice and comment.

Section 7. The FWDA and all successors in interest and assigns shall allow authorized representatives of Ecology, or its successor agency, the right to enter the property at reasonable times for the purpose of evaluating compliance with the Decree, its attachments and amendments; including any subsequent amendments thereto which are recorded with the Pierce County Auditor's Office, to take samples, to inspect cleanup actions conducted at the Property, and to inspect records that are related to the cleanup action. Likewise, the FWDA and all successors in interest and assigns shall also provide the City of Tacoma the right to enter the property at reasonable times for as long as the City of Tacoma is a party to the Decree for the purpose of evaluating compliance with the Decree, its attachments and amendments, including any subsequent amendments thereto which are recorded with the Pierce County Auditor's Office, to take samples, to inspect cleanup actions conducted at the Property, and to inspect records that are related to the cleanup action.

Section 8. The FWDA and its successors in interest and assigns, reserve the right under WAC 173-340-440 (1991 ed.) to record an instrument which provides that this Restrictive Covenant shall no longer limit use of the property or be of any further force or effect. However, such an instrument may be recorded only with the consent of Ecology, or its successor agency. Ecology or its successor agency may consent to the recording of such an instrument only after public notice and comment.

Section 9. The FWDA and all its successors in interest and assigns may prepare, and submit to Ecology for approval, a plan to manage health and safety issues that may arise during the course of routine maintenance and repairs on utilities (hereafter the "Plan"). If the Plan meets applicable regulatory requirements, is updated periodically as necessary, and is approved by Ecology for use at the Site, then such routine and emergency maintenance and repairs may be performed at the Site to the extent covered by, and in accordance with, the Plan. The FWDA and its successors in interest and assigns must notify Ecology immediately if any routine or emergency maintenance or repairs result in a release or exposure to the environment of a hazardous substance that remains on the Site as part of the Remedial Action, and shall comply with any orders or written directives from Ecology for the remediation of such releases.

**FOSS WATERWAY DEVELOPMENT
AUTHORITY**

By: _____

Its: _____

Date: _____

**Legal Description Corresponding to the Foss Waterway Development Authority's Portion
of Parcel 3**

Legal Description

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